

SETTLEMENT, LITIGATION AND LORD WOOLF'S REFORMS

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ABSTRACT:

Purpose of civil justice systems is to resolve disputes the involved parties in an effective, timely and efficient manner. Often, the benefits of civil justice systems are not limited to immediate case at hand but also similar future cases where the stakeholders become aware of implications of certain actions and choices. However, there are many factors arising from the practices related to settlement and litigation that can impact this civil justice system. In this paper, we have reviewed the settlement and litigation processes in terms of their impact on civil justice system. We have also reviewed the role of Lord Woolf's reforms in solving the issues arising from the use and misuse of these aspects.

INTRODUCTION:

In most dispute cases, parties settle the cases outside the court before the court proceedings. There are various motives and reasons for that. Sometimes it is because of lengthy court procedures. Sometimes, it is because of lack of understanding about court procedures and anxiety related to dealing with court matters. However, it cannot be guaranteed that any of the party is not exploited due to other party's influence or one's own lack of knowledge and high level of anxiety. In this paper, we will explore these aspects and identify the impacts of settlement, the litigation process and civil justice system.

OBJECTIVE:

Through this paper, we will conduct literature review and analysis to find out if following hypotheses are correct or not:

- Settlement, rather than litigation, poses a number of problems for a civil justice system
- These problems for civil justice system due to settlement have been largely resolved by Lord Woolf's reforms.

LITERATURE REVIEW AND ANALYSIS:

In order to understand the mutual relationship and impacts of settlement, litigation and civil justice system, it is important to review their definitions and the perceptions about them.

Settlement refers to a process in which most of the cases in the civil litigation system get resolved with a mutual agreement between the parties, plaintiff and defendant, either before or after the court activity or proceedings begin (Weisbrot, 2002). Weisbrot also mentioned that in most of the

cases, it happens before the case being brought to courts. A person who is at a risk of prosecution usually offers certain monetary or other incentives outside court which leads to formal or informal agreement or settlement between the parties and case does not come to courts. People mostly do this to control the situational risks ("What is Settlement Litigation?," 2011).

According to Business Dictionary, **Litigation** is defined as an "Ultimate legal method for settling controversies or disputes between and among persons, organizations, and the State. In litigation process, a case (called suit or lawsuit) is brought before a court of law suitably empowered (having the jurisdiction) to hear the case, by the parties involved (the litigants) for resolution (the judgment)" ("What is litigation?," 2007). In simple terms, Litigation refers to conduct of law suit which is a civil action in which court activity happens to provide equitable remedy for plaintiff for any loss incurred due to defendant's actions. Court makes the judgement based on evidence and available relevant information. Orders from courts are enforceable.

"Family Violence Program Shelter Center Provider Manual" from Texas Health and Human Services, US defines **Civil Justice System** as "A network of courts and legal processes that enforce, restore or protect private and personal rights" (*Family Violence Program Shelter Center Provider Manual*, 2008). It aims at ascertaining whether an "offender" is civilly liable for the losses sustained as a result of the crime or tort. Objectives of civil justice system include focus on enabling resolution of problems before they become disputes at an earliest opportunity and providing just and equitable access to legal processes without discrimination (Sheen & Gregory, 2012).

IMPACTS OF SETTLEMENT ON CIVIL JUSTICE SYSTEM:

- Purpose of settlement is not always to look for the 'best' option practically. It is sometimes done to avoid probable frustration from court processes (Weisbrot, 2002). Due to this reason, defendant may not get appropriate penalty for his wrong-doing and plaintiff may not receive appropriate compensation which can result in repetition of unjust behaviour causing reoccurrence of offense.
- Another way in which inappropriately managed or executed settlement can cause problems for the civil justice system is when settlement is done for wrong reasons (Weisbrot, 2002). In such cases, settlement can potentially result in serious breaches getting unpunished which strongly encourage same misdeed to be repeated. It can generate large number of other similar or related offenses becoming a serious threat for civil justice system.
- It is also found in studies that objectives of civil justice system are not restricted to resolution of private disputes and this should not make another critical interest in a democratic society ambiguous or doubtful resulting in imbalanced and inappropriate division of powers. According to a study by Australian Law Reform Commission, Australian Consumer and Competition Commission (ACCC) mentioned that it also aims at obtaining such strategic balance. They utilize negotiated settlements and ADR processes in order to acquire compliance from businesses in individual cases. On the other hand, they use litigation, as appropriate, in other cases to gain public reflection and to establish important legal precedents to discourage future recurrence (Sheen & Gregory, 2012). If settlement is always used as a preferred way, such precedents cannot be set.

- Settlements are mainly facilitated by mediators who are outside the system of courts and are paid by both parties (Winkler, 2007). It can cause problems for the civil justice system in two ways. 1, the mediators cannot enforce their own decision. They have to let parties come to an agreement through their mediation. This can leave a party with lesser influence or with lesser negotiation power at disadvantage. Two, if the mediator is not competent, it can further aggravate the situation and result in dispute which requires greater resources from courts.
- Due to excessive number of cases settled outside courts [96% in some states in Canada (Winkler, 2007) and 95% in USA (Leuschner, 2012)], there are fewer cases that come to court jury adding to opacity of the civil justice system (Leuschner, 2012). This often results in unknown or not appropriately communicated agreements resulting in lack of transparency.
- Having said this, settlements have numerous positive impacts on the system as well. In many countries, the civil justice system and relevant stakeholders are under pressure due to a number of factors including delays in processing, complex systems, diversity of cases, financial aspects, resource constraints and others. Due to these factors, policy makers do encourage 'alternate' solutions including settlements (Genn, 1997). This, therefore, necessitates a framework of rules in which settlements should happen governed by the importance and criticality of the case at hand.

LORD WOOLF'S REFORMS:

Lord Woolf's analysis of the civil justice system revealed that the litigation system was too expensive, too slow, lacking equality between powerful and wealthy litigants and under-resourced litigants, too uncertain in terms of the length and cost of litigation, too fragmented and too adversarial (Seneviratne & Peysner, 2006).

To overcome these gaps, he compiled his suggestions for reforms in "Access to Justice Report" (Woolf, 1996). His report was focussed around avoiding litigation and promoting settlement between parties at dispute.

Main points proposed by Lord Woolf include:

- Avoiding litigation, where possible
- Less adversarial and more co-operative systems
- Complexity reduction
- Shorter and firmer timescales
- More affordability and practicality
- Consideration towards value and complexity of individual cases.
- Provision of access to litigation on equal footing for parties with lesser financial means
- Clear distinction between judicial and administrative responsibility for the civil justice system.
- Effective deployment of judges to enable them comply with relevant system requirements and procedures
- Increased system responsiveness

IMPACTS OF LORD WOOLF'S REFORMS RELEVANT TO THE CONTEXT UNDER DISCUSSION:

Following analysis on Lord Woolf's reforms assesses the impacts on reducing problems for Civil Justice System caused by inappropriately handled or conducted settlements.

- As it has been mentioned previously that many settlements happen not because of the fact that ideal solution is reached but because parties want to avoid lengthy legal procedures and complex systems. Aim of reforms was to reduce complexity, increasing responsiveness, taking care of parties with lower financial position, reducing time scale and enhancing cooperation. All these aspects, if implemented, result in increased court effectiveness and resolution of issues in a timely manner providing due justice to all stakeholders. Reforms also shift control of proceedings and timeframe to courts by binding claimant and defendant under regulations and responsibilities to avoid delays resulting in shorter time frames to reach decision. Another recommendation to make it easier for parties to access civil justice system was to encourage use of single common expert rather than both parties engaging their own experts which was found to be a financially exhaustive and time consuming exercise.
- Pre-Action protocol, Part 36, Judicial Case Management and ADR ("PART 36 - OFFERS TO SETTLE. Judicial Case Management and ADR," 2013) was a brainchild of Lord Woolf and its relevant principles were adequately discussed in his reforms (Woolf, 1996). Purpose of these Protocols is to direct involved parties during the pre-litigation stage which will be taken into considerations by courts during and at the end of case while taking decision encouraging mutual exchange of complete information about claim in the beginning to avoid litigation by promoting settlement providing a healthy environment to take informed decisions. This way, settlement can happen in a controlled environment and in a fair manner with the availability of relevant information. If settlement is not possible and litigation is unavoidable to reach just decision, this process will ensure effective management of litigation.
- According to the protocol, it is the responsibility of plaintiff to provide details of the claim to the defendant beforehand. Similarly, defendant is required to respond to these claims within a stricter period of time. This established effective channels for sharing of relevant information relevant disclosures in timely manner ("PART 36 - OFFERS TO SETTLE. Judicial Case Management and ADR," 2013).
- Reviewing Lord Woolf's recommendations and Part 36 reveal availability of opportunity to any of the involved parties to make an offer in order to resolve the dispute. Lord Woolf advised that for a settlement offer to qualify as an offer under Part 36 it must be made in writing with the intention to have the consequences of part 36. There are numerous rules set around this including enforcement of settlement and relevant timeframes, consequences of refusal and other relevant aspects.
- Provision of tracks (small claim, fast track and multi-track) encourage dealing of cases based on their specific requirements resulting in more focussed approach from courts and spending resources where they are required more. This aspect could not be covered with

traditional settlement practice. This also ensures that critical cases receive due litigation consideration if required resulting in prevailing of justice in society.

- Focusing on ADR (Alternate Dispute resolution), Lord Woolf emphasis, "In recent years there has been, both in this country and overseas, a growth in alternative dispute resolution (ADR) and an increasing recognition of its contribution to the fair, appropriate and effective resolution of civil disputes ... litigation is not the only means of achieving this aim, and may not in all cases be the best" (Woolf, 1996). Loukas Mistelis in his case study of ADR in England and Wales considers it a successful case of public-private relationship (Mistelis, 2003).
- Loukas further discusses that Lord Woolf further suggested that according to Lord Woolf's reforms, the Court might of its own motion fix a hearing at which the parties could be required to explain what they had done to resolve a dispute without resort to the courts. This compels parties to make efforts for reaching a fair settlement before entering the litigation (Mistelis, 2003).

Many researchers believe that reforms have improved access to justice and overall structure of civil justice system is functioning much more effectively due to reduction in problems resulting from inappropriately conducted settlements (Goriely, Moorhead, & Abrams, 2002).

CONCLUSION:

Above mentioned analysis has been strongly supported by relevant statistics ("Woolf Reforms," 2015) including reduction of median time from medical report to settlement from 170 days to 123 days, reduction of claims to less than 1,90,000 in 2005 as compared to 2,20,000 in 1998, settlement of 70% of the cases at earlier stages, reduction of waiting time from issue of claim to trial from 85 weeks in 1998 to 52 weeks in 2005 in the county courts, 41.3 per cent drop in cases being litigated in the first year after reforms and further 1.7% decline in next 5 years till 2005 and handling of 70 per cent of the claims through the small claims track and 20 per cent through the fast track.

Considering above information, we are convinced that, although settlement, rather than litigation, poses a number of problems for a civil justice system in most cases, these matters have been largely resolved by Lord Woolf's reforms. However, in certain situations, it may be beneficial.

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